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March 31, 2004

TO: Each Supervisor

FROM: Thomas L. Garthwaite, M.D.
Director and Chief Medical Officer

SUBJECT: **CHARGES TO INDIGENTS**

This is to provide you with a report of the status of federal and state activities regarding hospital charging and collection practices as they are applied to the uninsured, and how these activities affect the County of Los Angeles Department of Health Services.

Actions at the Federal Level

As you will recall, this past summer, the House Ways and Means Subcommittee on Oversight and Investigations (Committee) began an investigation into hospital billing and collection practices as they relate to the uninsured, particularly low income uninsured individuals. The Committee subpoenaed the County of Los Angeles, among 20 other entities, requesting an extensive array of information. The County responded in October, 2003, providing a significant volume of documents and narrative information. To date, the Committee has not contacted the County with respect to its responses, nor has it scheduled hearings on this subject.

The American Hospital Association (AHA) took two actions in response to the Committee's investigation. The first was to submit a white paper to the Secretary of Health and Human Services. This informed him of concerns under Medicare and Medicaid about reducing charges to the uninsured and asked for clarification of certain rules. Second, on December 16, 2003, it issued a set of principles and guidelines on billing and collection practices which are intended to shape hospital activities in these areas. These guidelines are advisory only, and compliance by individual hospitals is voluntary.

Recently, the Secretary responded to AHA's white paper by providing a Q&A document from the Centers for Medicare and Medicaid Services (CMS). Although the CMS

document confirms that the County's understanding of the Medicare rules was correct, it does not add real clarity to the existing law. For example, it is internally inconsistent on the issue of when debt collection practices may differentiate between Medicare and uninsured patients without jeopardizing Medicare bad debt reimbursement. It also inadequately addresses the effect of discounts to the uninsured on the customary charge determination under Medicaid, which is an area of significant concern for the County.

The Office of Inspector General also issued a response to the AHA white paper. Like the CMS response, it confirmed our understanding of the law, but added little that was new or important.

Actions at the State Level

Last year, several members of the Assembly introduced AB 232, which addresses hospital billing practices with respect to the uninsured. The bill, which seems to reflect the authors' belief that not enough is being done to make hospital care affordable to the uninsured, has a number of very problematic provisions. These include burdensome information requirements and a mandated charge reduction for uninsured patients, which could have an adverse effect on Medicare and Medi-Cal reimbursement. The California Healthcare Association (CHA) has taken a leading role in opposing this legislation; the County has not taken a position on it. Currently, the bill is in suspense in the Senate. While this makes its passage unlikely, the bill has not been withdrawn and, theoretically, could be revived.

In the hopes of forestalling legislation, CHA issued a document entitled "Voluntary Principles and Guidelines for Assisting Low-Income Uninsured Patients" last month. Although not binding on hospitals, these principles and guidelines are intended to set industry standards on the appropriate treatment of the uninsured in California hospitals. Among CHA's guidelines are recommendations that hospitals have coherent, written charity care policies that make discounts available to those who are at or below 300% of the federal poverty level, and that limit the amount such patients are expected to pay to the amount received from the government payors. Further, the guidelines discourage wage garnishment and certain other collections practices, including the practice of sending accounts to collection while indigency determinations or Medi-Cal applications are pending.

The Department has examined the County's practices in light of CHA's guidelines, and find that it already complies completely or in significant part with many of them. In a few areas, such as collection agency monitoring and notices to patients, minor adjustments will be made to bring the County's practice into line with CHA's recommendations. However, the County does not conform to several of the guidelines because the County's approach to discounts/charity care is different than CHA's. Rather than using a percentage discount, or capping payment at the amount paid by Medicare or Medi-Cal, the County system looks at what patients at various income and asset levels should be capable of paying. This results in most of the County's uninsured patients receiving completely free care. Even persons with income in excess of 500% of federal poverty level receive a reduction in charges for

longer inpatient stays. However, under the County's existing policies, a few individuals, particularly those above 133% of the federal poverty level, are expected to pay some or all of our normal charge for minor outpatient services, and may pay more than the Medi-Cal contract rate for short inpatient stays. These practices were, however, approved by patient advocates in the Etter consent decree, and would require court consent to change.

If you have any questions about these matter, please let me know, or your staff may contact Mr. Larry Gatton (213-240-8366) of my staff.

TLG:amg

c: Chief Administrative Officer
County Counsel
Executive Officer, Board of Supervisors

(CHARGES TO INDIGENTS)